

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VERNARD MILES,

Plaintiff,

vs.

No. CV 16-00118 KG/CG

GREGG MARCANTEL, et al.,

Defendants.

ORDER OF DISMISSAL

THIS MATTER is before the Court *sua sponte* under 28 U.S.C. § 1915(b)(1) and Fed.R.Civ.P. 41(b) on Plaintiff Vernard Miles' 42 U.S.C. § 1983 complaint (Doc. 1) ("Complaint"). The Court will dismiss Plaintiff's Complaint without prejudice for failure to comply with the Court's March 3, 2016, Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915(b) and to Make Payments or Show Cause (Doc. 7) and March 22, 2016, Order Denying Extension of Time (Doc. 9). Also before the Court are Plaintiff's Motion for Appointment of Counsel (Doc. 4) and Motion for Order re: Lien (Doc. 5), which the Court will deny as moot in light of the Court's dismissal of the Complaint.

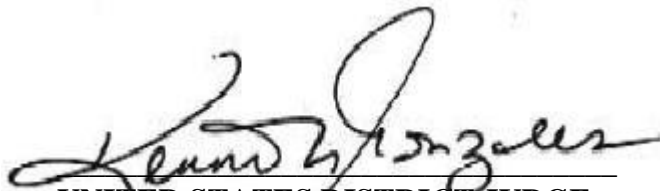
Plaintiff Miles is proceeding pro se and *in forma pauperis*. Miles filed his Complaint on February 18, 2016. (Doc. 1). On March 3, 2016, the Court entered its Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915(b), and to Make Payments or Show Cause. (Doc. 7). The Court ordered Miles to make a partial payment of \$64.53 or show cause why the payment should be excused on or before March 28, 2016. The Order also advised Plaintiff that, if he failed to make the partial payment or to show cause within that time period, his civil rights complaint

could be dismissed without prejudice. (Doc. 7). On March 14, 2016, Plaintiff filed a Motion for Extension of Time asking the Court to grant him an additional forty-five days to make the initial partial payment. (Doc. 8). The Motion gave no reason for the request for additional time. The Court denied his Motion for Extension of Time on March 22, 2016, but granted Plaintiff Miles additional time and ordered that he make the payment or show cause why the payment should be excused by April 11, 2016. (Doc. 9).

The Court may dismiss an action under Fed.R.Civ.P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003) (noting that a district court may dismiss, *sua sponte*, when one of the rule 41(b) conditions is met). Plaintiff Miles has not made the required partial payment or shown cause why payment should be excused and, therefore, has not complied with the Court's March 3, 2016 and March 22, 2016 Orders. Pursuant to Fed.R.Civ.P. 41(b) the Court will dismiss the Complaint based on Plaintiff's failure to comply with the Orders.

IT IS ORDERED that Plaintiff Vernard Miles' 42 U.S.C. § 1983 complaint (Doc. 1) is **DISMISSED** without prejudice for failure to comply with the Court's March 3, 2016, and March 22, 2016, Orders.

IT IS ALSO ORDERED that Plaintiff's Motion for Appointment of Counsel (Doc. 4) and Motion for Order re: Lien (Doc. 5) are **DENIED** as moot based on the Court's dismissal of the Complaint.



UNITED STATES DISTRICT JUDGE